

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ANTOLIN ANDREW MARKS,  
Plaintiff,  
v.  
DE GUIA, *et al.*,  
Defendants.

Case No. C07-5667BHS/JKA

## ORDER ADOPTING REPORT AND RECOMMENDATION

The Court, having reviewed the Report and Recommendation of Magistrate Judge J. Kelley Arnold and the remaining record, and no objections to the report and recommendation having been filed, does hereby find and ORDER:

- (1) The Court adopts the Report and Recommendation;
- (2) Defendant Pierce County Sheriff's motion to dismiss for lack of service is **DENIED**. The motion to dismiss the action for failure to state a claim is **GRANTED**. Plaintiff may not maintain a civil action collaterally challenging the legality of his current custody and an action of this nature must proceed in Habeas Corpus.
- (3) The Clerk is directed to send copies of this Order to plaintiff, counsel for defendants, and to the Hon. J. Kelley Arnold.

DATED this 3<sup>rd</sup> day of March, 2008.

  
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BENJAMIN H. SETTLE  
United States District Judge

## ORDER